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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,218	01/16/2001	Jaime Vargas	032405-042	7487

33109 7590 10/07/2003

CARDICA, INC.  
900 SAGINAW DRIVE  
REDWOOD CITY, CA 94063

EXAMINER

NGUYEN, VI X

ART UNIT PAPER NUMBER

3731

DATE MAILED: 10/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/764,218

Applicant(s)

VARGAS ET AL.

Examiner

Victor X Nguyen

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 2-9, 17 and 19-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 10-16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 10-16 and 18 are rejected under 35 U.S.C. 102 (e) as being anticipated by Yancho et al. (U.S. 6,179,849).

As to claim 1, Yancho et al show in figures 9, 10 and abstract, col. 5, lines 34-67, col. 6, lines 1-5, a method for grafting a graft vessel to a target vessel including an incision (100) in the target vessel (102); wherein placing incision tensioners (84, 86) within the incision in the target vessel (102) and tensioning the incision in the target vessel (102) with the incision tensioners (84, 86); and wherein grafting the graft vessel to the target vessel (102) while the incision (100) is tensioned. Furthermore, removing the incision tensioners (84,86) is from the incision after the grafting.

As to claims 10 and 11, Yancho et al show in figs 9 and 10, wherein the incision (100) is tensioned to a predetermined length which corresponds to a size of the graft vessel to be grafted to the target vessel (102); and wherein pulling the incision tensioners (84, 86) with a predetermined force.

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As to claim 12, the method step, "the predetermined force...", is not given any patentable weight since the step fails to recite any structure limitations. However, the Yencho device is capable of being predetermined force in the aforementioned manner.

As to claims 13 and 14, Yencho et al show in fig. 15 and col. 17, lines 1-35, wherein the incision tensioners are clips (142 is considered clips) which include a first tine (148) and a second tine (150); and wherein both the first tine (148) and the second tine (150) are configured to penetrate both the graft vessel and the target vessel (102).

As to claims 15-16 and 18, Yencho et al show in fig. 15, wherein both the first tine (148) and the second tine (150) capture the graft vessel and the target vessel (102); wherein both the first tine (148) and the second tine (150) are configured to fold over such that the first tine (148) and the second tine (150) capture the graft vessel and the target vessel (102); and wherein the tensioning of the incision (100) allows a geometry of the incision in the target vessel (102) to remain constant during the anastomosis procedure.

### ***Response to Arguments***

2. Applicant's arguments filed 07/24/2003 have been fully considered but they are not persuasive. With respect to claim 1, applicant indicates that none of the reference of Yencho '849 describes each element of claim 1. The examiner, respectfully, disagrees. The anastomosis device of the Yencho reference includes an incision (100) in the target vessel (102); wherein placing incision tensioners (84, 86) within the incision in the target vessel (102) and tensioning the incision in the target vessel (102) with the incision tensioners (84, 86); and wherein grafting the graft vessel to the target vessel (102) while the incision (100) is tensioned; wherein removing the incision tensioners (84,86) is from the incision after the grafting (Figs 9, 10).

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Furthermore, the Yencho reference teaches an anastomosis device that is capable of removing from the incision in the target vessel (labeled in col. 2, lines 5-24, col. 5, lines 52-67 and col. 6, lines 1-5). Since the device of Yencho is capable of performing the same method steps as the applicant's device for grafting a graft vessel to a target vessel during an anastomosis procedure. Therefore, the claimed invention is not patentable over Yencho's preference.

### *Conclusion*

**3. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

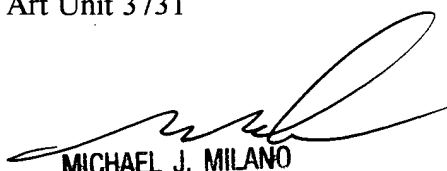
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn *✓H*  
October 3, 2003

  
**MICHAEL J. MILANO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**